

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

**ROBERT J. HANFLING, CHAPTER 11
TRUSTEE FOR ATG, INC. AND
CATALYTICS LLC**

Plaintiff,

V.

C.A. No. 05-10077-RGS

**EPSTEIN BECKER & GREEN, P.C.
JOHN PRESTON, CHRISTOPHER NAGEL,
EUGENE BERMAN, ETHAN JACKS,
QUANTUM CATALYTICS LLC, ABC
CORPS 1 through 5 and JOHN DOES
1 through 5,**

Defendants.

**MOTION FOR RECONSIDERATION OF DEFENDANTS JOHN
PRESTON, CHRISTOPHER NAGEL, AND QUANTUM CATALYTICS LLC**

Defendants Quantum Catalytics LLC (“Quantum”), John Preston and Christopher Nagel (“Defendants”) respectfully submit this Motion for Reconsideration of so much of Defendants’ Motion to Dismiss that was denied by the Order entered by this Court on August 19, 2003 (the “August 19 Order”). As grounds for this Motion, Defendants state as follows:

1. Defendants Quantum Catalytics LLC (“Quantum”), respectfully requests that this Court reconsider so much of the August 19 Order as denied Quantum’s motion to dismiss it from the case entirely. As set forth in its memoranda in support of its Motion to Dismiss and as discussed at oral argument, the Complaint did not set forth any

factual bases for finding liability on the part of Quantum for any of the Counts asserted. Plaintiff was provided an opportunity to re-plead and, by letter to this Court dated September 16, 2005, stated its intention not to do so. Therefore, Quantum respectfully requests that it now be dismissed from this case.

2. In addition, Defendants respectfully request that the Court reconsider so much of the August 19 Order as denied Defendants motion to dismiss Count III on the grounds that Plaintiff failed to meet the heightened pleading requirement of Fed. R. Civ. P. 9(b). On August 19, after oral argument, this Court dismissed Count II of the Plaintiff's complaint, alleging fraud, and allowed plaintiff thirty days to file an amended complaint. At the same time, this Court denied Defendants' motion to dismiss Count III, alleging negligent misrepresentation, with the caveat that it may re-evaluate its ruling in regard to Count III based upon an examination of the anticipated amended complaint. Plaintiff has now taken the position that he will not file an Amended Complaint. In light of Plaintiff's failure to re-plead, Defendants respectfully request that this Court reconsider the merits of Defendants' Motion to Dismiss Count III.

WHEREFORE, for the reasons more fully detailed in Defendants' Memorandum in Support of this Motion, Defendants respectfully request that this Court grant

Defendants' Motion for Reconsideration, and dismiss Count III as to John Preston,
Christopher Nagel and Quantum Catalytics LLC.

Dated: September 21, 2005

Respectfully submitted,

DEFENDANTS QUANTUM
CATALYTICS LLC, JOHN PRESTON,
and CHRISTOPHER NAGEL

By their attorneys,

//Joseph S. Ayoub, Jr.//

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served by U.S. mail upon the attorney of record for each party who did not receive electronic service of this document.

Dated: September 21, 2005

//Nancy E. Maroney//

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